

ORIGINAL



IP Communications

DOCKET FILE COPY ORIGINAL

April 26, 2000

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington DC 20554

RECEIVED  
APR 26 2000  
FEDERAL COMMUNICATIONS COMMISSION  
DEPT. OF THE SECRETARY

Re. Application of SBC Communications Inc. Pursuant to Section 271 of the  
Telecommunications Act of 1996 to provide In-Region, InterLATA services in Texas, CC  
Docket No 00-65

Dear Ms. Salas,

Enclosed for filing is IP Communications Affidavit in Docket No. 00-65.

Sincerely,

A handwritten signature in cursive script that reads "Sean Minter".

Sean Minter

No. of Copies rec'd  
List ABCDE

0+5

Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

APR 23 2000

FEDERAL COMMUNICATIONS COMMISSION  
DEPARTMENT OF THE SECRETARY

In the Matter of )  
 )  
Application by SBC Communications, )  
Inc., Southwestern Bell Telephone )  
Company, and Southwestern Bell )  
Communications Services, Inc. d/b/a )  
Southwestern Bell Long Distance )  
for Provision of In-Region, InterLATA )  
Services in Texas )  
 )

CC Docket No. 00-65

**SUPPLEMENTAL DECLARATION OF SEAN MINTER  
ON BEHALF OF IP COMMUNICATIONS CORPORATION**

Based on my personal knowledge and on information learned in the course of my business duties, I, Sean Minter, declare as follows:

**Qualifications**

1. My name is Sean Minter. I am the President and Chief Operating Officer of IP Communications Corporation (IP). IP is an innovative provider of high-speed telecommunications services including digital subscriber line (DSL). In my present position, I have the overall responsibility of developing IP's corporate strategy and implementation. In this position, I participated in the collaborative process of the Texas Public Utility Commission's (TPUC) Section 271 proceeding (Project No. 16251). In addition to my corporate responsibilities for IP, I also participated as a consultant on behalf of AT&T during much of Project No. 16251 and Project No. 20000 (the Operation Support Systems testing project). In this declaration, I only address issues relating to SWBT's market readiness as it affects the ability of IP to provide DSL services to Texas consumers. Prior to assuming my current responsibilities, I was closely involved in the negotiations and arbitrations relating to AT&T's interconnection agreements with SWBT in Texas, Arkansas, Kansas, Missouri, and Oklahoma.

### **Purpose of Supplemental Declaration**

2. The purpose of my supplemental declaration is to respond to the supplemental affidavits filed by SWBT. These comments will focus on issues relating to IP's market entry into the DSL marketplace in Texas. I also incorporate by reference the substance of my original declaration and my reply declaration previously filed in CC Docket No. 00-4 rather than restating them in this supplemental declaration. The initial declaration generally discussed the barriers in place that prevent xDSL markets from being irreversibly open to competition. The reply comments supported the comments of the Department of Justice by updating my prior declaration with subsequent activity relating to line sharing which demonstrate the complexities surrounding the deployment of DSL services and the need to withhold 271 relief until the market for DSL is irreversibly open to competition. These comments provide both responses to SWBT supplemental affidavits and updated performance data.

### **Responses to SWBT Reply Comments**

3. **Supplemental Affidavit of Michael C. Auinbauh.** Mr. Auinbauh's affidavit contains a number of statements with which IP takes issue. In paragraph 4, Mr. Auinbauh states that SWBT is offering cost-based prices associated with [central office-based] line sharing. IP strongly disagrees that these rates are cost-based. IP has discussed this concern in its contract negotiations, during line-sharing trial meetings, and during xDSL plan of record discussions. Moreover, two months ago, IP filed with the Texas PUC a request to develop cost-based rates for line sharing. Rather than cooperate with IP in that forum which could have resulted in Texas PUC approved cost-based rates for line sharing, SWBT has filed a motion to dismiss that docket which is currently pending before Texas PUC arbitrators. Regardless of the outcome on the SWBT motion to dismiss that proceeding, SWBT actions have delayed the development of cost-based rates. SWBT's allegation that its proposed rates are cost-based is not

sufficient to meet its burden of proof on this issue. By way of example, in the second SWBT mega arbitration in Texas, SWBT proposed rates that it alleged to be cost-based. After the conclusion of the arbitration, the Texas PUC Commissioners, sitting as arbitrators, determined final UNE rates that were, in most cases, less than the rates SWBT claimed to be cost-based.<sup>1</sup>

4. Mr. Auinbauh states in paragraph 5 that since SWBT does not provide advanced services, such as ADSL, FCC concerns regarding “disadvantages CLECs might face vis-à-vis the ILEC’s own advance service offerings cannot be applied to SWBT.” This statement is incorrect. First of all, the effect of the statement is to suggest that even if prices are not cost-based, the FCC should not be concerned because SWBT’s advanced services affiliate is paying the same prices. Such analysis is faulty. Section 251(c) of the act requires TELRIC-based rates to not only lessen the potential for discrimination but also to foster the development of efficient telecommunications infrastructure. A more appropriate cost-based model would have DSL providers pay the incremental cost associated with adding line sharing to an already in service local loop.

5. In paragraph 7, Mr. Auinbauh states that SWBT intends to recover \$28 million for data providers to access systems. This requirement appears to be in violation of the FCC’s SBC/Ameritech Merger conditions. In those merger conditions, SBC waives costs associated with accessing OSSs. Instead, SBC is limited to recovering transaction-based costs through service order charges. It appears as if SWBT has attempted to cloud this inconsistency by recovering the capital costs through a transaction-based rate design. Although costs of

---

<sup>1</sup> Docket No. 16189, *Petition of MFS Communications Company, Inc. For Arbitration Of Pricing Of Unbundled Loops*; Docket No. 16196, *Petition Of Teleport Communications Group, Inc. For Arbitration To Establish An Interconnection Agreement*; Docket No. 16226, *Petition Of AT&T Communications Of The Southwest, Inc. For Compulsory Arbitration To Establish An Interconnection Agreement Between AT&T And Southwestern Bell Telephone Company*; Docket No. 16285, *Petition Of MCI Telecommunication Corporation And Its Affiliate MCImetro Access Transmission Services, Inc. For Arbitration And Request For Mediation Under the Federal Telecommunications Act Of 1996*; Docket No. 16290, *Petition Of American Communications Services, Inc. And Its Local Exchange Operating Subsidiaries For Arbitration With Southwestern Bell Telephone Company Pursuant To The Telecommunications Act Of 1996* (collectively the second SWBT “Mega Arbitration”), Arbitration Award (Dec., 1998).

investment would normally be recoverable if TELRIC principles are met, as a condition of its merger with Ameritech, SBC agreed to waive such cost recovery over a requisite time period to address FCC concerns regarding market concentration.

6. In paragraph 8, Mr. Auinbauh states that by offering a line sharing attachment as an amendment to the T2A, it has met its burden under Section 271 to provide reasonable terms and conditions for UNEs. In effect, this argument amounts to SWBT arguing that it can offer for Section 271 purposes a Statement of Generally Accepted Terms and Conditions (SGAT) for line sharing that has never been reviewed by a state commission for compliance with section 251 and 271 and that was not a product of negotiation with the CLEC community.<sup>2</sup> Simply stated, SWBT cannot demonstrate that markets are “irreversibly open to competition” with untested language and a citation to Section 252 of the FTA.

7. Also regarding the availability of the line sharing attachment, IP requested proposed line sharing language that would be applicable to Texas on February 23, 2000 but received no response. Approximately two weeks later, that request was resent to IP’s account manager. At no time did SWBT provide proposed language on line sharing that would be applicable to parties that adopted the T2A. IP first learned of the existence of such an amendment by reading Mr. Auinbauh’s affidavit. Not only is it troubling that SWBT would rely on an offering that it did not provide to requesting carriers, it is equally troubling that Mr. Auinbauh states in his affidavit that as of April 3, 2000 three CLECs have accepted those terms. This history is undeniable evidence of discriminatory treatment. It is not clear how SWBT could justify providing language that was requested by IP in February to at least three other carriers while failing to provide the information to IP. Mr. Auinbauh also fails to state whether one of

---

<sup>2</sup> The FCC should understand that this argument by SBC that it can meet Section 271 obligations by simply throwing down an initial proposal for terms, conditions, and rates that can be arbitrated later has a broader application than this proceeding. SBC has made the same argument in California. See Joint Reply Of MCI Worldcom and the Competitive Telecommunications Association (Comptel) to Pacific Bell Telephone Company’s (U 1001 C) Supplemental Compliance Filing, R.93-04-003, I.93-04-002, R.95-04-043, and I.95-04-044 (April 6, 2000).

those three carriers is ASI nor whether the Texas PUC had approved any of those amendments as consistent with the public interest at the time the supplemental affidavits were filed.

8. **Supplemental Affidavit of Lincoln Brown.** Ms. Brown's affidavit at paragraph 8 states that ASI received information and notification of changes in SWBT's network, such as Project PRONTO, through the same disclosures as unaffiliated CLECs. IP representatives attended the Project PRONTO meeting in Dallas at which time SBC provided some limited information regarding Project PRONTO. One of the things learned in that meeting was that Project PRONTO has been under development for up to two years. SWBT, however, kept that a secret from its wholesale customers who require adequate notice to adjust their business plans. ASI personnel, who were transferred from other SBC positions, had to have knowledge of the coming Project PRONTO disclosures and were therefore provided advanced planning to assist ASI's development of market strategies. Moreover, as initially filed by SBC, Project PRONTO was clearly tailored to ASI's needs. It was based on an ADSL architecture and uses the same equipment vendor that ASI uses. The deployment was unilaterally decided by SWBT rather than following a collaborative deployment model for need and prioritization that was used for deployment of central office-based line sharing architecture changes. Given that SWBT is not providing advanced services and is in business to provide wholesale inputs for advanced services to CLECs, one would expect SWBT to seek input from its customers before making network upgrades to advance the provision of advanced services. The fact that it did not follow such a typical wholesaler's approach calls into question the alleged neutrality of the Project PRONTO deployment.

9. SBC's implementation has neutralized many of the benefits of the separate affiliate outlined by Ms. Brown in paragraph 13. In that paragraph, Ms Brown states, in part, that ASI will be limited to using the same interfaces, process, and procedures for placing orders for UNEs as are made available to CLECs and that ASI would only utilize those OSS interfaces available to any other CLEC. Taking the second item first, what this has amounted to is SWBT making available certain databases, like Premis, only now because ASI needs direct access to it,

even though it has steadfastly refused to make Premis available to CLECs that have been requesting direct access for years. This example demonstrates that the business decisions of SWBT wholesale are not separated from the business development of ASI. Regarding the use of the same OSSs, the FCC needs to understand that the same IT organization that SWBT wholesale uses to develop systems for CLEC use are also developing the retail software programs for ASI. This means that ASI software developers have inside knowledge on interpreting documentation provided to CLECs and that SWBT wholesale developers have inside knowledge as to ASI's retail programs and therefore have the capability to consider what would work best with ASI's developed software packages when developing wholesale requirements. ASI should be required to hire outside vendors to have parity or SBC should make available all development for ASI that has been assisted by the SBC internal IT organization.

10. Also on this point in Ms. Brown's affidavit, SBC has so exaggerated the joint marketing allowances that ASI does not need to have a participatory role in the ordering process. The "order-taking" allowance in the merger conditions should reasonably read as allowing SWBT retail employees to ask an SWBT retail customer if the customer is interested in DSL services and forwarding the customer to an ASI employee. That is obtaining an "order" from the customer for DSL. Instead, SBC includes within "order-taking", performing the pre-qualification, performing a loop qualification, obtaining all customer information, inputting the information directly into ASI's ordering software, and electronically passing the order to ASI. All ASI needs to do is have the receiving computer reformat the transmission into an EDI format and send it back to SWBT. NO human intervention by ASI. This cannot be what the FCC envisioned in the merger conditions.

11. In paragraph 16, Ms Brown states that SWBT will refer the customer to the Advanced Services provider if known when the customer calls in a trouble to SWBT in error. For clarity, when Ms. Brown uses the term "refer", the SWBT policy is to tell the customer to hang up and call that Advanced Services provider. SWBT is not willing to engage in the process of "referring" the customer through a warm transfer.

12. **Supplemental Affidavit of Carol Chapman.** Ms. Chapman's affidavit at paragraph 10 states that line sharing will be implemented in May ahead of the FCC's deadline. To be clear, if a CLEC uses its own splitters, like ASI, line sharing will be available by the end of May according to SBC provided schedules. If a CLEC uses SBC provided splitters, as IP believes is a required option pursuant to the Line Sharing Order<sup>3</sup>, most central offices will not have line sharing implemented until after the FCC's deadline.

13. **Supplemental Affidavit of Rod Cruz.** Mr. Cruz's affidavit at paragraph 11 discusses the process for developing the line sharing trial architecture. For clarity, it should be noted that although it is true that the trial contained two predominant architectures, one using CLEC owned splitters and one using ILEC-owned splitters, the option overwhelmingly requested by CLECs but not required by ASI, the ILEC-owned splitter option, was rejected by SBC as a commercial architecture. CLECs expended substantial resources pleading for SBC to reconsider. IP even filed a petition at the Texas PUC that included splitter provision as one of the key issues. It was not until months after the trial began that SBC agreed to change its position. While IP applauds SBC for changing its position, it must be noted that system development and facility deployment for the CLEC consensus (ILEC-owned) option has been delayed due to the length of that dispute and CLECs have been placed in a relative disadvantage as compared with ASI as a result.

14. As alluded to above, IP believes that for SWBT to meet its requirement of providing CLECs the high frequency portion of the loop, SWBT is required by the Line Sharing Order to provide as an option, splitter functionality to CLECs on a UNE basis. SWBT, as evidenced by paragraph 18, argues that SWBT is not required to provide such functionality but instead made a voluntary offer.

---

<sup>3</sup> Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of Telecommunications Act of 1996, CC Dkt. Nos. 98-157 and 96-98, FCC No. 99-355 (rel. Dec. 9, 1999) (Line Sharing Order).



15. Mr. Cruz' discussion relating to price elements and their relative terms and conditions, which is contained in Paragraph 27, demonstrates the concern I mentioned when discussing cost-based rates in conjunction with Mr. Auinbauh's supplemental affidavit. SWBT has included various forecast parameters and penalty provisions that have not been found to be consistent with TELRIC principles. An expedited arbitration in Texas is necessary before SWBT can meet its burden of proof as to the existence of TELRIC-based rates.

16. Finally, Mr. Cruz's affidavit concludes with a discussion of OSSs that are being developed to support line sharing. Rather than repeating them here, I incorporate by reference the Notification of Final Status of Advanced Services OSS Plan of Record in which IP joined.<sup>4</sup>

**IPC's Specific Performance Demonstrates a Failure to Meet the Texas PUC-Developed Performance Measures**

17. In my Reply Declaration, I included data regarding the wholesale service IP has received from SWBT. That data helped fill the gap regarding the lack of competitor-specific data on key measures. IP now updates that information as follows:

% FOC on TIME	
<u>Month</u>	<u>% Met</u>
Jan-00	36%
Feb-00	8%
Mar-00	62%
April-00	69%

18. The performance received by IPC in January, February, March and April despite assurances in SBC's 271 application to the contrary, demonstrate a failure to achieve the performance criteria established by the Texas PUC. There are also discrepancies between the

---

<sup>4</sup> The notification, which was joined by IP, Rhythms Links, Inc. ("Rhythms"), MCI WorldCom, Inc., AT&T Corp., Sprint, Covad Communications, Inc. ("Covad"), NorthPoint Communications, Inc., Intermedia Communications Inc, CoreComm Communications, Inc., and Birch Telecom, Inc., was filed on April 3, 2000 in CC Docket No. 98-141.

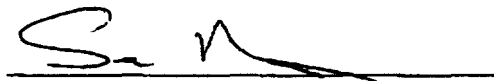
data measured internally by IPC and the data provided by SWBT. Such results are not minor breaches of parity requirements but can be devastating to a new entrant particular when SBC's retail operations can quote a shorter interval than IPC can achieve due to inadequate performance by SBC. Moreover, this performance is at a time when SBC's performance is being highly scrutinized raising concerns that performance may deteriorate as the oversight lessens.

**Current Aspects of SBC's Implementation of Line Sharing Demonstrate that the Market for DSL Competition Are NOT Irreversibly Open**

19. Rather than repeat them here, the impacts of various SWBT frailties on the developing market for DSL services are chronicled in my initial and reply comments. I incorporate those discussions into these supplemental comments by reference.

20. This concludes my reply on behalf of IP Communications Corporation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Reply on behalf of IP Communications Corporation is true and correct to the best of my knowledge and belief.



Sean Minter

Dated: April 26, 2000.